Supreme Court, U.S.
FILED
JUL 10 1991
OFFICE OF THE CLERK

No. 90-6531

# In the Supreme Court of the United States

OCTOBER TERM, 1991

KEITH J. HUDSON, PETITIONER

*v.*

JACK MCMILLIAN, ET AL.

*ON WRIT OF CERTIORARI*
*TO THE UNITED STATES COURT OF APPEALS*
*FOR THE FIFTH CIRCUIT*

## BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

KENNETH W. STARR
*Solicitor General*

JOHN R. DUNNE
*Assistant Attorney General*

ROBERT S. MUELLER, III
*Assistant Attorney General*

CHRISTOPHER J. WRIGHT
*Acting Deputy Solicitor General*

RONALD J. MANN
*Assistant to the Solicitor General*
*Department of Justice*
*Washington, D.C. 20530*
*(202) 514-2217*

## QUESTION PRESENTED

Whether the court of appeals correctly determined that a beating by prison guards that "occasioned unnecessary and wanton infliction of pain," J.A. 32, did not constitute cruel and unusual punishment because the prisoner did not suffer "a significant injury," J.A. 33.

## TABLE OF CONTENTS


| | Page |
|---|---|
| Interest of the United States | 1 |
| Statement | 2 |
| Summary of argument | 4 |
| Argument: | |
| A beating by prison guards that occasioned "unnecessary and wanton infliction of pain" constitutes cruel and unusual punishment | 5 |
| A. Respondents unnecessarily and wantonly inflicted pain on petitioner | 7 |
| B. The court of appeals erred by applying a "significant injury" requirement | 11 |
| Conclusion | 15 |


## TABLE OF AUTHORITIES

Cases:


| | |
|---|---|
| *Bell* v. *Wolfish*, 441 U.S. 520 (1979) | 8 |
| *Capital Cities Cable, Inc.* v. *Crisp*, 467 U.S. 691 (1984) | 7 |
| *Duckworth* v. *Franzen*, 780 F.2d 645 (7th Cir. 1985), cert. denied, 479 U.S. 816 (1986) | 6-7 |
| *Dudley* v. *Stubbs*, 489 U.S. 1034 (1989) | 9 |
| *Estelle* v. *Gamble*, 429 U.S. 97 (1976) | 6, 7 |
| *G.D. Searle & Co.* v. *Cohn*, 455 U.S. 404 (1982) | 7 |
| *George* v. *Evans*, 633 F.2d 413 (5th Cir. 1980) | 6 |
| *Gregg* v. *Georgia*, 428 U.S. 153 (1976) | 6 |
| *Graham* v. *Connor*, 490 U.S. 386 (1989) | 6, 9, 10 |
| *Hudson* v. *Palmer*, 468 U.S. 517 (1984) | 8 |
| *Huguet* v. *Barnett*, 900 F.2d 838 (5th Cir. 1990) | 3, 4 |
| *Hutto* v. *Finney*, 437 U.S. 678 (1978) | 12 |
| *Ingraham* v. *Wright*, 430 U.S. 651 (1977) | 7 |
| *Johnson* v. *Glick*, 481 F.2d 1028 (2d Cir.), cert. denied *sub nom. John* v. *Johnson*, 414 U.S. 1033 (1973) | 6, 9, 10, 12, 13 |
| *Jones* v. *North Carolina Prisoners' Labor Union, Inc.*, 433 U.S. 119 (1977) | 9 |

Cases—Continued: Page

*McHenry* v. *Chadwick*, 896 F.2d 184 (6th Cir. 1990) ..... 13
*Parratt* v. *Taylor*, 451 U.S. 527 (1981) ..... 14
*Rhodes* v. *Chapman*, 452 U.S. 337 (1981) ..... 6, 8
*Rochin* v. *California*, 342 U.S. 165 (1952) ..... 10
*St. Louis* v. *Praprotnik*, 485 U.S. 112 (1988) ..... 7
*Trop* v. *Dulles*, 356 U.S. 86 (1958) ..... 12
*Weems* v. *United States*, 217 U.S. 349 (1910) ..... 12
*West* v. *Atkins*, 487 U.S. 42 (1988) ..... 6
*Williams* v. *Boles*, 841 F.2d 181 (7th Cir. 1988) ..... 13
*Wilson* v. *Seiter*, No. 89-7376 (June 17, 1991) ..... 4, 5, 6
*Whitley* v. *Albers*, 475 U.S. 312 (1986) ..... 6, 8, 9, 10

Constitution and statutes:

U.S. Const.:
Amend. V (Due Process Clause) ..... 6
Amend. VIII ..... 2, 3, 5, 6, 12, 13, 14, 15
Cruel and Unusual Punishments Clause ..... 1
18 U.S.C. 242 ..... 1
28 U.S.C. 636(c) ..... 3
42 U.S.C. 1983 ..... 2, 6

# In the Supreme Court of the United States

OCTOBER TERM, 1991

No. 90-6531

KEITH J. HUDSON, PETITIONER

*v.*

JACK MCMILLIAN, ET AL.

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT*

## BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

### INTEREST OF THE UNITED STATES

The court of appeals held that a beating administered by prison guards did not constitute cruel and unusual punishment because the prisoner's injuries were not significant enough to require medical attention. Several interests of the United States are affected by the application of the Cruel and Unusual Punishments Clause of the Eighth Amendment in this context. First, the Department of Justice has authority under 18 U.S.C. 242 to prosecute persons who deprive others of constitutionally protected rights under color of law and has used this authority to prosecute state prison guards in circumstances similar to those presented by this case. Second, the De-

partment of Justice defends actions brought by federal inmates alleging violations of the Eighth Amendment. Finally, the United States has a general interest in ensuring that the law regarding violent conduct by law enforcement officials adequately protects the rights of citizens while taking into account the legitimate concerns of law enforcement officials.

## STATEMENT

1. Petitioner Keith Hudson is an inmate confined in the Louisiana state penitentiary in Angola, Louisiana. On October 30, 1983, petitioner became involved in a dispute with a prisoner in an adjacent cell. After respondent Jack McMillian, a corrections officer at the penitentiary, told petitioner to be quiet, petitioner and McMillian argued. McMillian and the two other respondents (Marvin Woods and Arthur Mezo), who were also employees at the penitentiary, then placed petitioner in handcuffs and shackles to move him to another cell. Petitioner did not resist. On the way to the other cell, McMillian punched petitioner several times in the mouth, eyes, chest, and stomach, while Woods held petitioner by the back of his jumpsuit and kicked him from behind. J.A. 20-23, 26, 31. Mezo, a lieutenant and the supervisor of Woods and McMillian, did nothing to stop the beating, but "cautioned the officers not to 'have too much fun.'" J.A. 31. The beating "cracked [petitioner's] partial dental plate, split his lower lip and loosened his teeth." *Ibid.* Petitioner also "received bruises to his body." *Ibid.*

2. Invoking 42 U.S.C. 1983, petitioner commenced this action in the United States District Court for the Middle District of Louisiana, contending that the beating by the respondents constituted cruel and unusual punishment. The parties consented to a trial



before a magistrate pursuant to 28 U.S.C. 636(c). The magistrate found that "Woods and McMillian used force on [petitioner] when there was no need to use any force at all, and that Mezo expressly condoned the use of force." J.A. 26. The magistrate further found that "the force used resulted in minor bruises and swelling to [petitioner's] face, mouth and lip, and also damaged his partial plate sufficiently to make it unwearable." *Ibid.*

The magistrate said that to determine whether physical abuse by prison guards constitutes an Eighth Amendment violation, "the court must consider three factors: the amount of force exerted relative to the need for its application[;] the extent of injury inflicted; and the motivation of the officers." J.A. 27. Because in this case "there was no need to use any force since [petitioner] was already in restraints," the magistrate held that respondents "violated [petitioner's] rights under the Eighth Amendment by the use of unnecessary and excessive force." J.A. 27, 28. But because petitioner had "proved only minor injuries to his back and mouth" and had not sought punitive damages, the magistrate awarded just $800 in damages. J.A. 28-29.

3. The court of appeals applied the four-part test articulated in its decision in *Huguet* v. *Barnett*, 900 F.2d 838 (1990), which required petitioner to prove:

1. a significant injury, which
2. resulted directly and only from the use of force that was clearly excessive to the need, the excessiveness of which was
3. objectively unreasonable, and
4. the action constituted an unnecessary and wanton infliction of pain.

J.A. 32 (quoting *Huguet*, 900 F.2d at 841). The court agreed that the second, third, and fourth elements of the test were met. It explained that "no force was required; therefore, the force used was objectively unreasonable," and added that "[t]he conduct of McMillian and Woods qualified as clearly excessive and occasioned unnecessary and wanton infliction of pain." J.A. 32. But the court of appeals found that petitioner's claim "founders on the significant injury prong." *Ibid.* Stressing that the magistrate "characterized [petitioner's] injuries as 'minor' and noted that they 'required no medical attention,'" the court held that they did not "constitute a significant injury." J.A. 33.

## SUMMARY OF ARGUMENT

The sole test this Court has used to determine whether prison officials violated the Eighth Amendment by taking actions not required by the terms of an inmate's sentence is whether the actions constituted "unnecessary and wanton infliction of pain." See, *e.g.*, *Wilson* v. *Seiter*, No. 89-7376 (June 17, 1991), slip op. 2. In our view, that is the proper test in this case.

In considering whether actions taken by prison officials were unnecessary and wanton, courts should recognize the difficult task prison officials face in trying to maintain security within correctional institutions and should not second-guess the decisions of prison officials regarding the need to employ force to further legitimate disciplinary and security concerns. But in this case the factual findings show that there was no need for application of any significant amount of force because petitioner was handcuffed and in shackles and not resisting the guards when



he was beaten. Thus, respondents acted in an unnecessary and wanton fashion.

The test applied by the court of appeals imposes a threshold requirement that a prisoner establish that a beating caused a "significant injury," and the court of appeals found that there was no significant injury in this case because petitioner did not require medical attention. The court of appeals' test is faulty because it would shield any action, however torturous, so long as it leaves no lasting marks. The court should have focused instead on whether petitioner experienced substantial *pain*, wantonly inflicted. Although most cases involving such an infliction of pain also will involve significant and objectively demonstrable physical harm, an acceptable rule must allow prisoners to prove that prison officials unnecessarily and wantonly inflicted considerable pain, even if the prisoner did not suffer such a harm. In our view, the magistrate's findings show that petitioner must have experienced considerable pain on account of the beating respondents inflicted on him.

## ARGUMENT

### A BEATING BY PRISON GUARDS THAT OCCASIONED "UNNECESSARY AND WANTON INFLICTION OF PAIN" CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT

The Eighth Amendment proscribes the infliction of "cruel and unusual punishments." Most of the cases interpreting the Amendment have considered the constitutionality of sentences imposed by a court, but the provision also has been applied to "deprivations that were not specifically part of the sentence but were suffered during imprisonment." *Wilson* v. *Seiter*, No. 89-7376 (June 17, 1991), slip op. 2. This Court has

applied a variety of tests to determine whether a sentence violates the Eighth Amendment. See, *e.g.*, *Gregg* v. *Georgia*, 428 U.S. 153, 170-173 (1976) (joint opinion of Stewart, Powell, and Stevens, JJ.) (discussing Eighth Amendment rules against punishments that are torturous, disproportionate, and excessive). However, it uniformly has evaluated the cruelty of nonsentencing deprivations by considering whether they involve "unnecessary and wanton infliction of pain." See *Wilson*, slip op. 2; *Graham* v. *Connor*, 490 U.S. 386, 398 n.11 (1989); *Whitley* v. *Albers*, 475 U.S. 312, 319 (1986); *Rhodes* v. *Chapman*, 452 U.S. 337, 346 (1981); *Estelle* v. *Gamble*, 429 U.S. 97, 103-104 (1976); see also *Gregg* v. *Georgia*, 428 U.S. at 173 (joint opinion of Stewart, Powell, and Stevens, JJ.) (first articulating this test).[1]

[1] The Eighth Amendment does not prohibit all acts that are "cruel and unusual," but only cruel and unusual "punishments." It has been suggested that some actions taken by prison employees might not have a sufficient patina of state authorization to constitute "punishment" under the Eighth Amendment, even if the employee clearly is acting under color of state law for purposes of Section 1983 (although the actions nevertheless might be subject to scrutiny under the Due Process Clause). See, *e.g.*, *West* v. *Atkins*, 487 U.S. 42, 58 (1988) (Scalia, J., concurring) ("I do not believe that a doctor who lacks supervisory or other penological duties can inflict 'punishment' within the meaning of that term in the Eighth Amendment."); *Johnson* v. *Glick*, 481 F.2d 1028, 1032 (2d Cir.) (per Friendly, J.) ("[A]lthough a spontaneous attack by a guard is 'cruel' and, we hope, 'unusual,' it does not fit any ordinary concept of 'punishment.'"), cert. denied *sub nom. John* v. *Johnson*, 414 U.S. 1033 (1973); *George* v. *Evans*, 633 F.2d 413, 415 (1980) ("An isolated assault by an individual guard on an inmate is not, within the meaning of the eighth amendment, punishment."); cf. *Graham*, 490 U.S. at 392 n.6 (noting the issue). But see, *e.g.*, *Duckworth* v. *Franzen*, 780 F.2d 645, 652 (7th Cir. 1985) (per Posner, J.) ("If a guard decided to supplement a prisoner's official punishment by beating him, this would be punishment, and 'cruel and unusual' because the Supreme Court has interpreted the term to forbid unauthorized * * * punishment."), cert. denied, 479 U.S. 816 (1986). There is some force to these suggestions. If, for example, a prison guard shot both a prisoner and a fellow guard on account of some personal dispute, it would seem clear that the guard who was shot had not been "punished," and it is not clear why a different result should obtain with respect to the prisoner.

Although this Court has not explicitly addressed the issue, the Court implicitly held in *Estelle*, 429 U.S. at 104-105, that prison doctors can "punish" inmates, without requiring a showing of official authorization. See *Ingraham* v. *Wright*, 430 U.S. 651, 688 & n.4 (1977) (White, J., dissenting). This suggests that the required amount of authorization, if any, should be significantly less than that required to show that an action was mandated by a government policy to such an extent that the government itself may be held liable for damages. See, *e.g.*, *St. Louis* v. *Praprotnik*, 485 U.S. 112, 124-127 (1988) (plurality opinion of O'Connor, J.); *id.* at 138-140 (Brennan, J., concurring). There may well have been sufficient authorization here, where respondent Mezo, the supervisor of respondents McMillian and Woods, observed the beating, did not stop it, and merely cautioned the subordinate guards not to "have too much fun," J.A. 31. In any event, because the issue was neither discussed by the court of appeals nor raised in the papers accompanying this Court's grant of plenary review, this Court need not address the issue. See, *e.g.*, *Capital Cities Cable, Inc.* v. *Crisp*, 467 U.S. 691, 697 (1984); *G.D. Searle & Co.* v. *Cohn*, 455 U.S. 404, 414 (1982). Nonetheless, greater doctrinal clarity in this respect is of increasing practical importance in view of the substantial expansion in recent years in the number of cases of this sort.



**A. Respondents Unnecessarily And Wantonly Inflicted Pain On Petitioner**

Although the phrase "unnecessary and wanton infliction of pain" literally requires a prisoner to demonstrate that pain was inflicted both unnecessarily

and wantonly, in many cases the issues will blend together. That is because evidence establishing that a particular action was motivated by legitimate concerns for prison security or discipline will show both that the action was necessary and that the official did not act wantonly. Similarly, proof that the action served no legitimate purpose would tend to prove both that the action was unnecessary and that the official acted wantonly in taking the action.

As this Court has noted, in evaluating constitutional claims relating to the operation of prisons "courts must bear in mind that their inquiries 'spring from constitutional requirements and that judicial answers to them must reflect that fact rather than a court's idea of how best to operate a detention facility.'" *Rhodes* v. *Chapman*, 452 U.S. at 351 (quoting *Bell* v. *Wolfish*, 441 U.S. 520, 539 (1979)). In *Whitley*, this Court considered actions prison employees took in response to a full-scale riot. The Court emphasized the "responsibility of ensuring the safety of the prison staff administrative personnel, and visitors, as well as the 'obligation to take reasonable measures to guarantee the safety of the inmates themselves.'" 475 U.S. at 320 (quoting *Hudson* v. *Palmer*, 468 U.S. 517, 526-527 (1984)). The Court concluded that the need to "balanc[e] competing institutional concerns for the safety of prison staff or other inmates" requires courts to understand that "infliction of pain in the course of a prison security measure * * * does not amount to cruel and unusual punishment simply because it may appear in retrospect that the degree of force authorized or applied for security purposes was unreasonable, and hence unnecessary in the strict sense." *Whitley*, 475 U.S. at 319-320.

These comments are just as apposite in the present context, because the "ever-present potential for



violent confrontation and conflagration" that exists in prisons, 475 U.S. at 321 (quoting *Jones* v. *North Carolina Prisoners' Labor Union, Inc.*, 433 U.S. 119, 132 (1977)), inevitably requires a balancing of those same concerns even *before* violent confrontations have broken out. See *Dudley* v. *Stubbs*, 489 U.S. 1034, 1037-1038 (1989) (O'Connor, J., dissenting from denial of certiorari) (suggesting that *Whitley* applies even in the absence of a full-scale riot). As Judge Friendly put it:

> The management by a few guards of large numbers of prisoners, not usually the most gentle or tractable of men and women, may require and justify the occasional use of a degree of intentional force. Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers, violates a prisoner's constitutional rights.

*Johnson* v. *Glick*, 481 F.2d 1028, 1033 (2d Cir.), cert. denied *sub nom. John* v. *Johnson*, 414 U.S. 1033 (1973); see also *Graham*, 490 U.S. at 396-397 (noting, with regard to an analogous claim under the Fourth Amendment, that "[t]he calculus * * * must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation").

The use of force by prison guards on an individual basis typically involves consideration, admittedly in a less urgent context, of the security concerns at issue in *Whitley*. We believe that in determining whether such actions are unnecessary and wanton, courts should be guided, as in *Whitley*, by the factors articulated by Judge Friendly in *Johnson* v. *Glick*, *supra*. Those factors include

> the need for the application of force, the relationship between the need and the amount of force that was used, the extent of injury inflicted, and whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm.

*Glick*, 481 F.2d at 1033; see *Whitley*, 475 U.S. at 321.[2] These factors themselves do not provide "some talismanic formula" for deciding cases; but they provide a list of inquiries that should in most cases help to "focus on the central inquiry * * *, which is whether the particular use of force amounts to the 'unnecessary and wanton infliction of pain.'" *Graham*, 490 U.S. at 398 n.11.

Application of these factors to this case shows that respondents inflicted an unnecessary and wanton beating on petitioner. The key facts here are that petitioner was in shackles and handcuffs when he was beaten, and the guards did not contend that he was resisting their efforts to move him to another cell.[3]

[2] Judge Friendly articulated these factors in the course of suggesting that the constitutional standard for evaluating prison beatings was a substantive due process standard drawn from *Rochin* v. *California*, 342 U.S. 165 (1952), an approach this Court subsequently has discredited, see *Graham* v. *Connor*, 490 U.S. 386, 392-394 (1989). Nevertheless, as the opinion in *Whitley* demonstrates, the factors Judge Friendly articulated are useful in determining whether the force applied by prison guards represented a legitimate response to prison management concerns, as opposed to an "unnecessary and wanton infliction of pain."

[3] The guards did not offer any justification for their use of force. To the contrary, Woods "denied that he used any force whatsoever" against petitioner. J.A. 24. The magistrate refused to credit that testimony, and instead found that "Woods and McMillian used force on the plaintiff when there was no need to use any force at all, and that Mezo expressly condoned the use of force in this instance," J.A. 26.



In these circumstances—even giving due deference to the concerns respondents may have had in attempting promptly to defuse what may have seemed a tense situation—it is difficult to conclude that there was any need for respondents to apply any considerable amount of force. Although the injuries sustained by petitioner were not particularly serious, they undoubtedly were painful. In addition, it strains credulity to find that they were necessary, when the factual findings below suggest no reason for the use of force. This case would likely be different if the blows were sustained by a prisoner who was not yet shackled and was resisting the efforts of guards to remove him from his cell, or if it were apparent from the record that the restraints were inadequate to prevent petitioner from engaging in disruptive behavior while the guards were trying to move him; in those scenarios, the use of force by the guards could well be grounded in legitimate security concerns. But on the facts as found below, it is clear that respondents unnecessarily and wantonly beat petitioner.

### B. The Court Of Appeals Erred By Applying A "Significant Injury" Requirement

The court of appeals did not disagree with the conclusion that respondents' actions were unnecessary and wanton; indeed, it said that "[t]he conduct of McMillian and Woods qualified as clearly excessive and occasioned unnecessary and wanton infliction of pain." J.A. 32. But the court imposed a threshold requirement that prisoners establish that an alleged

beating caused a "significant injury." *Ibid.*[4] The court did not elaborate on the "significant injury" requirement, but held that petitioner's injuries were not significant because the magistrate described them "as 'minor' and noted that they 'required no medical attention.'" J.A. 33. This threshold requirement directly conflicts with the test this Court consistently has applied to Eighth Amendment challenges to actions by prison officials, which focuses on the "unnecessary and wanton infliction of pain," not the unnessary and wanton infliction of "significant injuries." [5]

The test applied by the court of appeals would shield any type of punishment, however torturous, that does not cause a visible and lasting injury. Examples of such punishments may be found in this Court's opinions, such as *Hutto* v. *Finney*, 437 U.S. 678 (1978), where this Court discussed the so-called Tucker telephone, "a hand-cranked device * * * used to administer electrical shocks to various sensitive parts of an inmate's body." *Id.* at 682 n.5. As Judge

[4] Aside from this requirement—the first of the four elements identified by the court of appeals—the test applied below is not dramatically different from the "unnecessary and wanton infliction of pain" test applied by this Court. That phrase is the fourth factor in the court of appeals' test, and the second and third factors—which require that excessive and objectively unreasonable force caused the injury—may be viewed as attempts (similar to the *Johnson* v. *Glick* factors described above) to focus the inquiry on what types of activity are "unnecessary and wanton."

[5] We note that this Court regularly has applied the Eighth Amendment to sentences that would not have involved any significant physical injury. *E.g.*, *Weems* v. *United States*, 217 U.S. 349 (1910) (cadena temporal, which involved prolonged shackling and forfeiture of civil rights); *Trop* v. *Dulles*, 356 U.S. 86 (1958) (forfeiture of citizenship).



Easterbrook recognized for a panel of the Seventh Circuit, it would be unthinkable for our society to accept a rule that leaves the state "free to inflict such pains without cause just so long as it is careful to leave no marks." *Williams* v. *Boles*, 841 F.2d 181, 183 (1988).

It is, of course, unlikely that the court of appeals adopted the "significant injury" requirement in order to exclude from scrutiny truly torturous punishments that "leave no marks." Rather, it is more likely that the court of appeals was motivated by a sound concern with baseless allegations by prisoners of beatings by prison guards. The "significant injury" requirement would allow district courts to dispose of most of the frivolous cases on motions for summary judgment, protecting prison guards from the necessity of standing trial. The problem with this test, though, as outlined above, is that the "significant injury" requirement will dispose not only of frivolous cases, but also of meritorious ones.

We believe the better approach is to apply the test this Court has regularly employed in Eighth Amendment cases challenging actions taken by prison officials, which focuses on whether there was an "unnecessary and wanton infliction of *pain*." See *McHenry* v. *Chadwick*, 896 F.2d 184, 187 (6th Cir. 1990) (rejecting the "significant injury" test). In applying this Court's test in a manner that adequately protects prison employees, it is necessary to recognize, as Judge Friendly noted in *Johnson* v. *Glick*, that "[n]ot every push or shove * * * violates a prisoner's constitutional rights," 481 F.2d at 1033. In all but the most unusual cases, force that is sufficient to constitute "unnecessary and wanton infliction of pain" will produce some significant and objectively demon-

strable physical harm, whether it be substantial bruising, burns, wounds, or broken bones. Lesser injuries generally should be considered beneath constitutional concern, under the principle that *de minimis non curat lex*. See, *e.g.*, *Parratt* v. *Taylor*, 451 U.S. 527, 545 (1981) (Stewart, J., concurring) (rejecting a claim that would "trivialize * * * the meaning and intent of the Constitution"). Thus, in most cases of this sort prison guards should not have to stand trial to defend themselves against fabricated allegations, because there will be some objective evidence that an incident occurred. But any test must leave open the possibility that a prisoner can show that prison officials unnecessarily and wantonly inflicted considerable pain, even if the incident did not cause significant and objectively demonstrable physical harm. In short, the court of appeals erred by adopting a rule that appears to insulate any infliction of pain that does not "require medical attention," J.A. 33.

Application of the appropriate rule to this case is straightforward. First, the physical injuries suffered by petitioner constitute a significant and objectively demonstrable physical harm sufficient to establish that an incident occurred. Second, in our judgment the beating the magistrate found respondents inflicted on petitioner is more than sufficient to establish the infliction of "pain" cognizable under the Eighth Amendment, so that petitioner should recover if the "pain" was inflicted unnecessarily and wantonly.

* * * * *

Because it is clear that respondents unnecessarily and wantonly beat petitioner, and because in our view the beating was sufficiently serious to be cognizable



under the Eighth Amendment, the damages awarded by the district court should be reinstated.[6]

## CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

KENNETH W. STARR
*Solicitor General*

JOHN R. DUNNE
*Assistant Attorney General*

ROBERT S. MUELLER, III
*Assistant Attorney General*

CHRISTOPHER J. WRIGHT
*Acting Deputy Solicitor General*

RONALD J. MANN
*Assistant to the Solicitor General*

JULY 1991

---

[6] Because neither court below applied the correct test to evaluate the seriousness of the beating inflicted on petitioner, this Court may wish to remand the case to the court of appeals for application of the appropriate test in light of the entire record.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1991 282061 20621